



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XB115

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Treasure Island Ferry Dock Project, San Francisco, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed issuance of an Incidental Harassment Authorization (IHA); request for comments.

SUMMARY: NMFS has received a request from the City and County of San Francisco, CA (San Francisco) for an incidental harassment authorization (IHA) to take marine mammals incidental to the Treasure Island Ferry Dock Project in San Francisco, California. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Some changes have occurred during this year's evaluation of the project. Pursuant to the Marine Mammal Protection Act, NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal IHA that could be issued under certain circumstances and if all requirements are met, as described in **Request for Public Comments** at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Meadows@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by

U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this

categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

History of Request

On July 15, 2020, NMFS issued an IHA to San Francisco to take marine mammals incidental to the Treasure Island Ferry Dock Project in San Francisco, California (85 FR 44043, July 21, 2020), effective from July 15, 2020 through July 14, 2021. On March 10, 2021, NMFS received an application for the Renewal of that initial IHA. As described in the application for Renewal IHA, the activities for which incidental take is requested consist of a subset activities that are covered by the initial authorization but will not be completed prior to its expiration. However, because the only remaining work is pile removal, which takes less time per pile, the applicant requested take based on 12 piles maximum removed per day, which was not explicitly discussed as one of the scenarios in the initial IHA process. The initial IHA process explicitly analyzed a number of scenarios for each phase of the work that were clearly described as the worst possible scenarios that could occur among a possible range of scenarios. The currently requested work is clearly less impactful than those scenarios and thus we believe this situation could qualify as a Renewal IHA. However, out of an abundance of caution, and because there is time for a full 30 day public comment period, we choose to treat this application as a standard submission and not a Renewal. San Francisco requested the new IHA be effective from July 15, 2021 through July 14, 2022.

Description of the Specified Activities and Anticipated Impacts

As described in the 2020 IHA, the project consists of the construction of a ferry terminal, breakwater, fireboat access pier, and removal of an old pier on Treasure Island in the middle of San Francisco Bay. Construction involved driving and/or removal of 36-inch-diameter steel piles and 14-inch steel H piles, driving of 48-inch-diameter steel piles and 24-

inch octagonal concrete piles, and removal of 12-inch diameter timber piles that supported the old pier. All pile installation has been completed as has removal of the old pier. The only work that remains is removal of 2 36-inch-diameter steel piles and 64 14-inch diameter steel H piles. Table 1 summarizes the original work authorized in the initial 2020 IHA, work completed to date under the initial 2020 IHA, work expected to be completed before the initial 2020 IHA expires, and work expected to be completed under this newly requested IHA. San Francisco's request is for take for the work expected to be completed before the initial 2020 IHA expires, and work expected to be completed under this newly requested IHA, just in case some of that work is not completed as expected. Pile removal is expected to take no more than 25 days. Pile removal would use vibratory methods only.

Table 1. Summary of Work Authorized, Completed, and Proposed for Authorization

Activity	Location	Piles				
		Number Authorized in initial IHA	Number Completed to Date in Initial IHA	Number to be Completed Before Initial IHA Expires	Number to be Completed in Proposed IHA	Type
Install Temporary Steel Template Piles (Vibratory)	Ferry Pier	4	0	0	0	14-inch steel H-piles
Remove Temporary Steel Template Piles (Vibratory)	Ferry Pier	12	8	0	2	14-inch steel H-piles
Install Octagonal Piles for North Breakwater (Impact)	North Breakwater	52	47	0	0	24-inch octagonal concrete
Install Sheetpiles for North Breakwater (Impact)	North Breakwater	120	98	0	0	14-inch concrete sheetpiles
Install Temporary Steel Template Piles (Vibratory)	North Breakwater	105	30	0	0	14-inch steel H-piles
Remove Temporary Steel Template Piles (Vibratory)	North Breakwater	105	32	15	25	14-inch steel H-piles
Install Temporary Steel Template Batter Piles (Vibratory)	North Breakwater	46	15	0	0	14-inch steel H-piles
Remove Temporary Steel Template Batter Piles (Vibratory)	North Breakwater	46	16	6	10	14-inch steel H-piles
Install Temporary Mooring Piles (Vibratory)	Mooring	2	0	0	0	36-inch steel pipe
Remove Temporary Mooring Piles (Vibratory)	Mooring	2	0	2	0	36-inch steel pipe
Install Temporary Mooring Batter Piles (Vibratory)	Mooring	4	0	0	0	14-inch steel H-piles
Remove Temporary Mooring Batter Piles (Vibratory)	Mooring	4	0	4	0	14-inch steel H-piles
Install Crew Access Piles (Vibratory)	Mooring	2	0	0	0	14-inch steel H-piles
Remove Crew Access Piles (Vibratory)	Mooring	2	0	2	0	14-inch steel H-piles
Remove Existing Pier (vibratory or crane cable)	Pier	198	198	0	0	12-inch timber
TOTAL		704	444	29	37	N/A

Note: Number authorized in initial IHA was maximum expected so total numbers completed and to be completed do not necessarily total to this number.

A detailed description of the demolition and construction activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial 2020 authorization. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. The initial 2020 IHA authorized take from pile driving and removal, by Level A and Level B harassment of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*) and harbor porpoises (*Phocoena phocoena*), and take by Level B harassment only of gray whales (*Eschrichtius robustus*), bottlenose dolphins (*Tursiops truncatus*), elephant seals (*Mirounga angustirostris*), and Northern fur seals (*Callorhinus ursinus*). Because only pile removal remains and there will be no simultaneous piling with multiple hammers, Level A harassment take is not necessary nor proposed to be authorized for this new IHA.

The proposed IHA would be effective from July 15, 2021 through July 14, 2022. All documents from the initial 2020 IHA can be viewed from the project webpage (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-treasure-island-ferry-dock-project-san-francisco-california>).

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial 2020 authorization. NMFS has reviewed the monitoring data from the initial 2020 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals contained in the supporting documents for the initial 2020 IHA. The only difference is an updated stock abundance estimate for the San

Francisco/ Russian River stock of harbor porpoises which has decreased from 9,886 to 7,524.

We consider this change in our findings below.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial 2020 authorization. NMFS has reviewed the monitoring data from the initial 2020 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notice of the final IHA for the 2020 authorization. Specifically, the source levels and marine mammal density/occurrence data applicable to this authorization remain unchanged from the 2020 IHA. Similarly, the stocks taken and methods of take remain unchanged from the 2020 IHA. As noted above, the types of take requested and proposed no longer include Level A harassment take because only pile removal remains and there will be no simultaneous piling with multiple hammers. The only change is the decreased number of days of operation and the necessity of revising the scenarios used to estimate take. No use of multiple hammers or simultaneous removal as was considered in the initial 2020 IHA is planned for this IHA. In addition to not using multiple hammers for this IHA, because of the limited number and type of piles remaining, and the work only being pile removal by vibratory hammer with no installation, the original scenarios used to estimate take and shutdown zones are no longer relevant. The remaining scenarios for this IHA are: (1) two days of work removing the two 36-inch steel piles and (2) 23 days removing up to 12 steel H piles per day. Both of these scenarios are reductions from the worst case scenarios

presented in the initial proposed IHA. The new scenario 1 above has no simultaneous driving, uses only a vibratory hammer with no impact hammering, and involves 36-inch piles rather than the 48-inch piles considered in the worst case scenarios of the initial proposed IHA. The new Scenario 2 above has no simultaneous driving, uses only a vibratory hammer with no impact hammering, and has a maximum of 120 minutes per day of vibratory hammer use as opposed to the worst case scenarios in the initial proposed IHA which considered up to 180 minutes per day of vibratory hammer use.

The inputs to calculate the Level A and Level B harassment isopleths for the new scenarios are in Table 2. The resulting Level A and Level B harassment isopleths are in Table 3. These new Level A and Level B isopleths are smaller than the worst case scenarios considered in the initial proposed IHA.

Table 2. NMFS Technical Guidance User Spreadsheet Inputs to Calculate Level A and Level B Isopleths for the Pile Removal Scenarios

Pile Type	14-inch H	36-inch Steel
Source Level (RMS SPL)	150	170
Number of piles per day	12	2
Duration to remove a single pile (minutes)	10	10
Distance of source level measurement (m)	10	10

Table 3. Calculated Distances (meters) to Level A and Level B Harassment Isopleths (m) During Pile Removal for each Hearing Group and Pile Type

Pile Type	Low-Frequency Cetaceans	Mid-Frequency Cetaceans	High-Frequency Cetaceans	Phocid Pinnipeds	Otariid Pinnipeds	Level B
14-inch H	2.0	0.2	3.0	1.2	0.1	1000
36-inch Steel	13.1	1.2	19.3	7.9	0.6	21,545

As was done in the initial 2020 IHA, we use density data from the multiple years of the San Francisco-Oakland Bay Bridge (SFOBB) project to estimate take for harbor seal,

California sea lion, and Harbor porpoise, and for other species we use more qualitative data on observations from the SFOBB project and observations from year one of this project along with local information on strandings and other biology. The density calculations are shown in Table 4. For bottlenose dolphin, take is still estimated at 0.33 dolphins per day for an estimated Level B harassment take of 9 dolphins. For the other species where we used qualitative information to estimate Level B harassment take in the initial IHA, we propose Level B harassment take at 40 percent of the take from the initial 2020 IHA, that is 4 Level B harassment takes each for gray whales and northern elephant seals, and 2 takes for northern fur seals. The proposed takes are indicated in Table 5 along with the authorized take from the initial 2020 IHA.

Table 4. Calculations of Level B Harassment Take From Density Data by Species

		Harbor Porpoise	California Sea Lion	Harbor Seal
SFOBB density (animals/ square km)		0.17	0.16	3.96
	Piling Scenario			
Days of Pile Driving	14-inch steel H-pile	23	23	23
	36-inch steel pipe	2	2	2
Area of Isopleth in square kilometers	14-inch steel H-pile	1.48	1.48	1.48
	36-inch steel pipe	117	117	117
Per day take Level B	14-inch steel H-pile	0.25	0.24	5.86
	36-inch steel pipe	19.89	18.72	463.32
Total Level B Take Calculated		46	43	1,062

Table 5. Proposed Authorized Amount of Taking, by Level B Harassment, by Species and Stock and Percent of Take by Stock and Take Authorized in Initial 2020 IHA

Species	2020 Authorized Take		Proposed Level B Take	Percent of Stock
	Level B	Level A		

Harbor seal (<i>Phoca vitulina</i>) California Stock	12,461	20	1,062	0.4
Harbor porpoise (<i>Phocoena phocoena</i>) San Francisco – Russian River Stock	538	7	46	0.6
California sea lion (<i>Zalophus californianus</i>) U.S. Stock	502	10	43	<0.1
Gray whale (<i>Eschrichtius robustus</i>) Eastern North Pacific Stock	10	0	4	<0.1
Common bottlenose dolphin (<i>Tursiops truncatus</i>) California Coastal Stock	61	0	9	2
Northern elephant seal (<i>Mirounga angustirostris</i>) California breeding Stock	10	0	4	<0.1
Northern fur seal (<i>Callorhinus ursinus</i>) California and Eastern North Pacific Stocks	5	0	2	<0.1

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial 2020 IHA (except terms related to work already completed (*i.e.*, pile installation and impact hammering) have been removed, and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this IHA:

- For in-water heavy machinery work other than pile removal (*e.g.*, standard barges, *etc.*), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane;
- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile removal activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;

- For those marine mammals for which Level B harassment take has not been requested, in-water pile removal will shut down immediately if such species are observed within or entering the Level B harassment zone; and
- If take reaches the authorized limit for an authorized species, pile removal will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following mitigation measures would apply to San Francisco's in-water construction activities.

- *Establishment of Shutdown Zones*- San Francisco will establish shutdown zones for all pile removal activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group. The largest shutdown zones are generally for low and high frequency cetaceans, as shown in Table 6.
- The placement and number of PSOs during all pile removal activities (described in detail in the **Monitoring and Reporting** section) will ensure that the entire shutdown zone is visible during pile removal. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.*, fog, heavy rain), pile removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Table 6. Shutdown Zones During Pile Removal (meters) by Scenario

Pile Type	Low-Frequency Cetaceans	Mid-Frequency Cetaceans	High-Frequency Cetaceans	Phocid Pinnipeds	Otariid Pinnipeds
14-inch H	10	10	10	10	10
36-inch Steel	20	10	20	10	10

- *Monitoring for Level A and Level B Harassment-* San Francisco will monitor the Level A and B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones.

Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential halt of activity should the animal enter the shutdown zone. Placement of PSOs will allow PSOs to observe marine mammals within the Level A and B harassment zones. However, due to the large Level B harassment zone for 36-inch piles (Table 3), PSOs will not be able to effectively observe the entire zone.

Therefore, Level B harassment exposures will be recorded and extrapolated, as necessary, based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

- *Pre-activity Monitoring-* Prior to the start of daily in-water construction activity, or whenever a break in pile removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a re-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile removal activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence.

- Pile removal must occur during daylight hours.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Monitoring section of the application and section 5 of the IHA. Marine mammal monitoring during pile removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- Independent PSOs (*i.e.*, not construction personnel) who have no other assigned tasks during monitoring periods must be used;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- San Francisco must submit PSO Curriculum Vitae for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Two PSOs will be employed. PSO locations will provide an unobstructed view of all water within the shutdown zone(s), and as much of the Level B harassment zones as possible. PSO locations are as follows:

- (1) At the pile driving site(s) or best vantage point practicable to monitor the shutdown zones; and
- (2) For the large Level B harassment zone associated with removal of 36-inch pipe piles, a second PSO will be placed near Pier 33 in San Francisco.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being removed. Pile removal activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were removed and by what method (*i.e.*, vibratory);
- Weather parameters and water conditions during each monitoring period (*e.g.*, wind speed, percent cover, visibility, sea state);

- The number of marine mammals observed, by species, relative to the pile location and if pile removal was occurring at time of sighting;
- Age and sex class, if possible, of all marine mammals observed;
- PSO locations during marine mammal monitoring;
- Distances and bearings of each marine mammal observed to the pile being removed for each sighting (if pile removal was occurring at time of sighting);
- Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;
- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);
- Detailed information about any implementation of any mitigation triggered (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;
- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and
- An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible, when applicable.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, San Francisco shall report the incident to the Office of Protected Resources (OPR), NMFS and to the regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, San Francisco must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Preliminary Determinations

As described above, the action in this IHA is a subset of the original activities consisting solely of removal of two types of steel pile with a new description of the specific scenarios remaining rather than consideration of the worst case scenarios possible as was done in the initial 2020 IHA. We found that the initial 2020 IHA would have a negligible impact and that the taking would be small relative to population size for all stocks. The only change in this IHA is the small decrease in the estimated abundance for the San Francisco/Russian River stock of harbor porpoises which has decreased from 9,886 to 7,524 and the consideration of the specific removal scenarios required now. Despite this stock size decrease the proposed take of 46 is still less than 10 percent of the stock and is thus small relative to the population size. The other marine mammal information is identical to the initial 2020

IHA. The potential effects, and the mitigation and monitoring are all less impactful because of the smaller harassment zones sizes for the remaining scenarios. The estimated take is greatly reduced and no Level A harassment take is proposed because of the smaller Level A harassment zone sizes and the lack of multiple hammer use,

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial 2020 IHA. This includes consideration of the estimated abundance of the harbor seal stock decreasing slightly and the discussion of the specific scenarios to account for the remaining work. The new scenarios have smaller level A and Level B harassment zones than the worst case scenarios analyzed in the 2020 IHA because of the removal of simultaneous driving, the smaller pile sizes and durations remaining, and the use of only a vibratory hammer in this IHA.

Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) San Francisco's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West

Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to San Francisco for conducting the Treasure Island Ferry Dock Project in San Francisco, California from July 15, 2021 through July 14, 2022, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the 2020 IHA), the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction activity at Treasure Island. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in

the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for renewal must include the following:
 - (1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
 - (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and
- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: May 24, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.